

9 FAM 41.57 Notes

(TL:VISA-437; 07-10-2002)

9 FAM 41.57 N1 Introduction

(TL:VISA-64; 08-07-1992)

The Q visa classification was created at INA 101(a)(15)(Q) by section 208 of the Immigration Act of 1990 (Pub. L. 101-649 of November 29, 1990) specifically for participants in international cultural exchange programs. The Attorney General was granted authority to approve cultural exchange programs for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the alien participant's country of nationality. A Q alien must be the beneficiary of a petition approved by INS prior to visa issuance.

9 FAM 41.57 N2 Requirements for Q Classification

(TL:VISA-64; 08-07-1992)

The elements for qualifying for Q nonimmigrant status are a(n):

- (1) Qualified employer [see 9 FAM 41.57 N3 below];
- (2) Designated program [see 9 FAM 41.57 N4 below];
- (3) Eligible participant [see 9 FAM 41.57 N5 below]; and
- (4) Approved petition [see 9 FAM 41.57 N6 and 9 FAM 41.57 N7 below].

9 FAM 41.57 N3 Eligibility of Petitioner

(TL:VISA-64; 08-07-1992)

The petitioner must be a qualified employer or its designated agent.

9 FAM 41.57 N3.1 Requirements for Qualified Employer

(TL:VISA-74; 02-19-1993)

A qualified employer is a U.S. or foreign firm, corporation, non-profit organization, or other legal entity including its U.S. branches, subsidiaries, affiliates, and franchises, which administers a designated international cultural exchange program. To establish eligibility as a qualified employer, an employer must:

(1) Have the ability to maintain an established international cultural exchange program;

(2) Have designated a qualified employee as a representative responsible for administering the program and serving as liaison with INS;

(3) Be doing business (i.e., the regular, systematic, and continuous provision of goods and/or services, including lectures, seminars and other types of cultural programs) in the United States;

(4) Offer the participant wages and working conditions comparable to those accorded local domestic workers similarly employed; and

(5) Must have the financial ability to remunerate the participant.

9 FAM 41.57 N3.2 Requirements for Agent of Qualified Employer

(TL:VISA-74; 02-19-1993)

To qualify as a petitioner, a designated agent of the qualified employer must be:

(1) Employed by the qualified employer on a permanent basis in an executive or managerial capacity; and

(2) A U.S. citizen, an alien lawfully admitted for permanent residence, or an alien provided temporary residence under INA 210 or 245A.

9 FAM 41.57 N4 Requirements for Approving International Cultural Exchange Programs

(TL:VISA-345; 01-09-2002)

The Attorney General designates an international cultural exchange program through the Form I-129, *Petition for Nonimmigrant Worker* process [see 9 FAM 41.57 N7 below]. The program must meet the following requirements:

(1) The culture sharing must take place in a school, museum, business or other establishment where the public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities which take place in a private home or an isolated business setting to which the public does not have direct access do not qualify;

(2) The program must have a cultural component which is an essential and integral part of the participant's employment or training. It must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, traditions, and/or other cultural attributes (arts, literature, language) of the alien's country of nationality. Structured instructional activities, such as courses or lecture series, addressing the above subjects, are deemed acceptable cultural components; and

(3) The alien participant's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. It must serve as the vehicle to achieve the objectives of the cultural component of the program. The sharing of the culture of the Q nonimmigrant's country of nationality must result from his or her employment or training with the qualified employer in the United States.

9 FAM 41.57 N5 Eligibility of Participants

9 FAM 41.57 N5.1 Requirements for Alien Participants

(TL:VISA-64; 08-07-1992)

Participants in Q cultural exchange programs must meet the following requirements:

(1) The alien must be at least 18 years of age at the time the petition is filed;

(2) The alien must be qualified to perform the service or labor or receive the training stated in the petition;

(3) The alien must have the ability to communicate effectively about the cultural attributes of his or her country of nationality with the American public; and

(4) If the alien has previously spent 15 months in the United States as a Q nonimmigrant, then he or she must have resided and been physically present outside the United States for the immediate prior year [see 9 FAM 41.57 N9 below].

9 FAM 41.57 N5.2 Country of Alien's Nationality

(TL:VISA-64; 8-07-1992)

The country of nationality is the country of which the alien was a national at the time he or she applied for status as an international cultural exchange visitor.

9 FAM 41.57 N5.3 Residence Abroad

(TL:VISA-64; 08-07-1992)

A Q nonimmigrant must establish to the satisfaction of the consular officer that he or she has a residence outside the United States which he or she has no intention of abandoning.

9 FAM 41.57 N6 Significance of Approved Petition

9 FAM 41.57 N6.1 INS Responsible for Adjudicating Q Petitions

(TL:VISA-64; 08-07-1992)

Every Q alien must be the beneficiary of a petition, approved by INS, prior to visa issuance or, in the case of visa-exempt aliens, admission into the United States. By mandating a preliminary petition, Congress placed responsibility and authority with INS to determine whether the requirements for Q status which are examined in the petition process have been met.

9 FAM 41.57 N6.2 Approved Petition Is Prima Facie Evidence of Entitlement to Q Classification

(TL:VISA-64; 08-07-1992)

a. An approved Form I-129, *Petition for Nonimmigrant Worker*, or evidence that the Q petition has been approved (an acceptable Form I-797, *Notice of Action* [see 9 FAM 41.57 N10.1 below], or telegraphic or telephonic notification from INS or the Department) is, in itself, to be considered by consular officers as prima facie evidence that the requirements for Q classification have been met. Consular officers do not have the authority to question the approval of Q petitions without specific evidence, unavailable to INS at the time of petition approval, that the beneficiary may not be entitled to status. The large majority of petitions approved by INS are valid, and involve bona fide establishments, relationships, and individual qualifications which conform to regulations in effect at the time the petition was filed.

b. On the other hand, the approval of a petition by INS does not relieve the alien of the burden of establishing visa eligibility. If the consular officer has reason to believe, based upon information developed during the visa interview or other evidence which was not available to INS, that the beneficiary may not be entitled to status, the consular officer may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with INS interpretation of the law or the facts, however, is not sufficient reason to ask INS to reconsider its approval of the petition.

9 FAM 41.57 N6.3 Referring Approved Q Petition to INS for Reconsideration

(TL:VISA-437; 07-10-2002)

Posts shall consider all approved Q petitions in light of these Notes, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving INS office for reconsideration. Posts should refer cases to INS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by INS. Consular officers must have specific evidence of either misrepresentation in the petition process or of previously unknown facts, which might alter INS's finding, before requesting review of a Form I-129, *Petition for a Nonimmigrant Worker* approval. When seeking reconsideration, the consular officer shall, *under cover of Form DS-3096, Consular Return/Case Transfer Cover Sheet*, forward the petition, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the approving INS office. A copy of all material must be retained at post.

9 FAM 41.57 N7 Petition Procedures

9 FAM 41.57 N7.1 Same Petition Used for Approval of Program and For Participants

(TL:VISA-74; 02-19-1993)

A qualified employer or its designated agent must file a Form I-129, *Petition for Nonimmigrant Worker*, either with the INS Service Center having jurisdiction over the employer's headquarters, or the INS Service Center having jurisdiction over the area where the alien will be employed or receive training. This petition is filed for the dual purpose of obtaining approval of an international cultural exchange program and for conferring Q status on the program's alien participants. The petition for Q nonimmigrants will be considered only if the employer's concurrent petition for the approval of the international cultural exchange program is granted. Subsequent to the approval of the initial petition, the qualified employer must file a new petition each time the employer wishes to bring in additional international cultural exchange visitors.

9 FAM 41.57 N7.2 Multiple Beneficiaries

(TL:VISA-74; 02-19-1993)

The petitioner may include more than one beneficiary on the petition. The petitioner must indicate the consulate at which each of the beneficiaries will be applying for visas, or ports of entry at which visa-exempt beneficiaries will be applying for admission.

9 FAM 41.57 N7.3 Substituting Beneficiaries

(TL:VISA-345; 01-09-2002)

a. A qualified employer may replace or substitute participants on a previously approved petition for the remainder of the program without filing a new Form I-129, *Petition for Nonimmigrant Worker*. The substituting participant(s) must meet the qualification requirements described in 9 FAM 41.57 N5 above.

b. To request a substitution or replacement, the petitioner shall, by letter, notify the consular office at which the alien will apply for a visa or, in the case of visa-exempt aliens, the port of entry where the alien will apply for admission. A copy of the petition's approval notice Form I-797, *Notice of Action* must be included with the letter. The petitioner must state the date of birth, country of nationality, level of education, and position title of each prospective participant and must certify that he or she is qualified to fill the position described in the approved petition. The petitioner must also indicate the alien's wages and certify that the alien is being offered prevailing wages and working conditions.

9 FAM 41.57 N7.4 Services in More Than One Location

(TL:VISA-64; 08-07-1992)

The beneficiary may engage in employment or training in different locations for the same employer. In such a case, the petition must include an itinerary with the dates and locations of the services, labor, or training to be performed.

9 FAM 41.57 N7.5 Services for More Than One Employer

(TL:VISA-64; 08-07-1992)

The employee may provide services or labor for, or receive training from, more than one employer. Each employer must file a separate petition with the jurisdictional INS Service Center. An alien may work or train part-time for multiple employers provided that each employer has an approved petition for the alien. For the issuance of a single visa to the beneficiary of more than one Q petition, see 9 FAM 41.57 N10.4 below.

9 FAM 41.57 N7.6 Change of Employers

(TL:VISA-64; 08-07-1992)

If a Q nonimmigrant in the United States seeks to change employers, the new employer must file a petition. The total period of time the Q nonimmigrant may stay in the United States remains limited to 15 months [see 9 FAM 41.57 N8.2 below].

9 FAM 41.57 N7.7 INS Notification to Petitioner of Petition Approval

(TL:VISA-64; 08-07-1992)

INS notifies the petitioner on Form I-797, *Notice of Action*, whenever a Q visa petition is approved. The petitioner may furnish Form I-797 to the employee for the purpose of applying for his or her Q visa, or to facilitate the employee's entry into the United States in Q status, either initially or after a temporary absence abroad during the employee's stay in Q status [also see N10.1 below].

9 FAM 41.57 N8 Validity of Approved Petition and Length of Stay

9 FAM 41.57 N8.1 Petition Validity

(TL:VISA-64; 08-07-1992)

An approved petition for an alien classified under INA 101(a)(15)(Q) is valid for the length of the approved program or for 15 months, whichever is shorter.

9 FAM 41.57 N8.2 Length of Stay

(TL:VISA-64; 08-07-1992)

A beneficiary may be admitted to the United States during the validity period of the petition. The alien's total period of stay in the United States under INA 101(a)(15)(Q) may not exceed 15 months.

9 FAM 41.57 N8.3 Extension of Stay

(TL:VISA-64; 08-07-1992)

The authorized stay of an alien in Q status may be extended within the 15-month limit if he or she is the beneficiary of a new approved petition.

9 FAM 41.57 N9 Limitation on Readmission

(TL:VISA-64; 08-07-1992)

An alien who has spent 15 months in the United States under INA 101(a)(15)(Q) may not be issued a visa or be readmitted under the Q classification, nor may a Q petition be approved for the alien, unless he or she has resided and been physically present outside the United States for the immediate prior year. Brief trips to the United States for business or pleasure during the immediate prior year do not break the continuity of the one-year foreign residence, but do not count toward the fulfillment of that requirement.

9 FAM 41.57 N10 Issuing Q Visas

9 FAM 41.57 N10.1 Evidence Forming Basis for Issuing Q Visas

(TL:VISA-345; 01-09-2002)

The appropriate evidence forming the basis for Q visa issuance consists of an approved Form I-129, *Petition for a Nonimmigrant Worker* telegraphic or telephonic notification from INS or the Department of the approval of such a petition, or a Form I-797, *Notice of Action*, presented by the visa applicant, which shows that the petition on his or her behalf has been approved or that his or her authorized stay in Q status has been extended. This Form I-797, printed on blue paper, must include the date of the Notice, the name of the petitioner, the name of the beneficiary (or beneficiaries), the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving INS office. It is a computer-generated form and is not signed. The only Form I-797 which is valid for visa issuance is one which, at a minimum, contains the above information. If a post has any question regarding the bona fides of a particular Form I-797, it should query the originating INS office directly.

9 FAM 41.57 N10.2 Validity of Q Visas

(TL:VISA-64; 08-07-1992)

The validity of a Q visa may not exceed the validity period of the petition approved to accord or extend Q status. If the period of reciprocity shown in 9 FAM Appendix C is less than the validity period of the approved petition or extension of stay, it shall prevail.

9 FAM 41.57 N10.3 Annotating Q Visas

(TL:VISA-64; 08-07-1992)

Posts shall enter the number of the alien's approved petition immediately below the lower margin of the visa, followed by the name and location of the alien's employer. MRV posts should follow appropriate operating instructions for annotating visas.

9 FAM 41.57 N10.4 Issuing Single Q Visa Based on More Than One Petition

(TL:VISA-64; 08-07-1992)

If the alien is the beneficiary of two or more Q petitions and does not plan to depart from the United States between engagements, consular officers may issue a single Q visa valid until the expiration date of the last expiring petition, reciprocity permitting. The required annotations [see 9 FAM 41.57 N10.3 above] from all petitions shall be placed below the visa.

9 FAM 41.57 N10.5 Limitation of Q Visas

(TL:VISA-64; 08-07-1992)

Consular officers may restrict visa validity in some cases to less than the period of validity of the approved petition or authorized period of stay (for example, on the basis of reciprocity or the terms of an order waiving a ground of ineligibility). In any such case, in addition to the notations described in 9 FAM 41.57 N10.3 above, posts shall insert the following:

“PETITION VALID/STAY AUTHORIZED (whichever is applicable) TO (date)”.

9 FAM 41.57 N10.6 Reissuing Q Visas

(TL:VISA-64; 08-07-1992)

When a Q visa is limited by reciprocity to a period of validity less than the validity of the petition or authorized period of stay, consular officers may reissue the visa any number of times within the period allowable. If a fee is prescribed by Appendices B/C/E, posts must collect the fee for each reissuance of the Q visa.

9 FAM 41.57 N11 Dependents of International Cultural Exchange Visitors Are Classifiable B-2

(TL:VISA-64; 08-07-1992)

INA 101(a)(15)(Q) does not provide derivative status for the spouse and children of international cultural exchange visitors. Therefore, a dependent accompanying or following to join a Q nonimmigrant must obtain a B-2 visa or any other classification for which he or she is qualified.

9 FAM 41.57 N12 Employment Restricted

(TL:VISA-64; 08-07-1992)

Q aliens may be employed only by the petitioner through which he or she attained Q status. Employment outside the specific program described in the approved petition is in violation of the alien's Q nonimmigrant status.